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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HSN CAPITAL HOLDINGS, LLC,

Plaintiff and Appellant,

v.

JIM PURCELL,

Defendant and Respondent.

G058178

(Super. Ct. No. 30-2010-00434955)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed.

Bradley L. Jacobs Attorney at Law and Bradley L. Jacobs for Plaintiff and Appellant.

Law Office of Jared Peterson and Jared Peterson for Defendant and Respondent.

HSN Capital Holdings, LLC (HSN) appeals from the trial court's order granting Jim Purcell's motion to set aside the default and the default judgment. HSN argues the court erred by granting the motion because the judgment was not void and Purcell was not diligent in seeking relief. We disagree and affirm the order.

FACTS

In early 2010, R.D. Olson Construction (RDO) and California Glass & Railings (CGR) executed a written subcontractor agreement for CGR to provide a hurricane-resistant glass wall system at a hotel in Hawaii. In late 2010, RDO sued CGR for inter alia breach of contract and negligence alleging the glass wall system was defective and another subcontractor had to complete the work.

In May 2011, CGR filed a cross-complaint against inter alia Jim Purcell and his company Jiangmen Kingkind Glass Manufacture, USA, Inc. (Jiangmen) alleging causes of action for equitable indemnity, contribution, and declaratory relief. The cross-complaint did not allege a specific amount of damages.

A couple months later, CGR served the cross-complaint and a separate "statement of damages" on Purcell. On September 1, 2011, default was entered against Purcell and Jiangmen.

On February 25, 2013, CGR settled with RDO for \$295,000.

A default prove-up hearing scheduled for June 3, 2013, was continued a couple of times to August 12, 2013. Meanwhile, CGR filed a request for the court to enter judgment against Purcell and Jiangmen for \$413,548. In support of the request for judgment, an attorney provided a declaration explaining Purcell and Jiangmen supplied defective glass and missed deadlines, which required another subcontractor to complete the work. The attorney provided the details of CGR's settlement with RDO. At the default prove-up hearing in August 2013, the trial court entered judgment for CGR against Purcell and Jiangmen. The following year, an abstract of judgment was issued.

Three years later, CGR assigned its rights under the judgment to HSN. The following year, HSN obtained a writ of execution and began the process to sell Purcell's real property. After the December 2018 order to show cause hearing, where Purcell and his attorney were present, Purcell's property was sold.

In April 2019, Purcell filed a motion to set aside the default and default judgment on the grounds of extrinsic mistake and the judgment was void because a corporation's directors/officers cannot be personally liable to third parties (Code Civ. Proc., § 473, subd. (d), all further statutory references are to the Code of Civil Procedure). The motion was supported by Purcell's declaration in which he stated he did not respond to the cross-complaint on the advice of counsel. HSN filed an opposition.

The trial court issued a minute order explaining Purcell's arguments were without merit. However, the court invited supplemental briefing on the issue of whether the judgment was void because CGR's cross-complaint failed to include a specific sum of damages, and the statement of damages was insufficient. The parties submitted briefs.

The trial court granted Purcell's motion to set aside default and default judgment. The court explained a void judgment can be attacked at any time, and the law favors judgment based on the merits. The court noted Purcell's "[m]otion was made 'on the grounds that the default judgment [was] void on its face under . . . [section] 473.'" Citing to section 580, subdivision (a), the court reasoned the relief granted to the plaintiff cannot exceed that demanded in the complaint except in cases involving personal injury, wrongful death, or punitive damages. The court said the cross-complaint failed to include a specific sum of damages. The court added the statement of damages did not cure the error because this was not a personal injury or wrongful death case. The court concluded section 580 required it to grant the motion.

DISCUSSION

"Section 473, subdivision (d), provides a trial court 'may, on motion of either party after notice to the other party, set aside any void judgment or order.'

‘[I]nclusion of the word “may” in the language of section 473, subdivision (d) makes it clear that a trial court retains discretion to grant or deny a motion to set aside a void judgment [or order].’ [Citation.] However, the trial court ‘has no statutory power under section 473, subdivision (d) to set aside a judgment [or order] that is not void’ [Citation.] Thus, the reviewing court ‘generally faces two separate determinations when considering an appeal based on section 473, subdivision (d): whether the order or judgment is void and, if so, whether the trial court properly exercised its discretion in setting it aside.’ [Citation.] The trial court’s determination whether an order is void is reviewed de novo; its decision whether to set aside a void order is reviewed for abuse of discretion. [Citations.] [¶] . . . [¶] An order is considered void on its face only when the invalidity is apparent from an inspection of the judgment roll or court record without consideration of extrinsic evidence. [Citations.] There is no time limit to attack a judgment void on its face. [Citations.]” (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020-1021.)

I. Default Judgment

HSN argues the trial court erred by concluding the judgment was void because it did so “on its own motion” and it was not void. Neither contention has merit.

First, “[a]lthough a trial court has discretion to vacate the entry of a default or subsequent judgment, this discretion may be exercised only after the party seeking relief has shown that there is a proper ground for relief, and that the party has raised that ground in a procedurally proper manner, within any applicable time limits.” (*Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97.) “A basic tenet of motion practice is that the notice of motion must state the grounds for the order being sought [citation], and courts generally may consider only the grounds stated in the notice of motion. [Citations.]” (*Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277 (*Kinda*).)

Here, Purcell moved to vacate the judgment in part because it was void. Although the basis for his argument was corporations law, HSN was on notice one of the

grounds for Purcell's motion was the judgment was void. The trial court did not raise the void judgment issue on its own. The court did, however, raise another theory regarding whether the judgment was void. *Kinda, supra*, 247 Cal.App.4th 1268, is instructive.

In that case, in a different context, i.e., a motion in limine, the *Kinda* court addressed whether the trial court erred when it ruled evidence was inadmissible based on a theory defendant did not raise in its motion. (*Kinda, supra*, 247 Cal.App.4th at p. 1277.) The court stated the notice requirements require the moving party to sufficiently define the issues for the adverse party and the trial court. (*Ibid.*) The court added, "Sometimes this purpose is met notwithstanding deficient notice." (*Ibid.*) The court reasoned that although the trial court broadened the scope, plaintiffs had an ample opportunity to respond to the grounds raised by the trial court in their supplemental brief. (*Id.* at p. 1278.)

Here, like in *Kinda*, although the trial court broadened the scope concerning whether the judgment was void, HSN was on notice of the issue which it had to address. HSN fully developed its arguments in its supplemental brief. HSN had a fair opportunity to brief its position in response to the court's broadened inquiry.

HSN relies on *United States v. Sineneng-Smith* (2020) ____ U.S. ____ [140 S.Ct. 1575], to argue the trial court violated the principle of party presentation. In that case, the Ninth Circuit Court of Appeals appointed three *amici* and invited them to brief an issue defendant did not raise in the district court. (*Id.* at p. 1578.) The court explained the party presentation principle states courts are passive instruments that decide the questions the parties present. (*Id.* at p. 1579.) The court reasoned the appellate court's radical transformation of the case by raising an issue defendant did not raise violated the principle of party presentation. (*Id.* at pp. 1581-1582.) The court reversed and remanded the matter for the appellate court to decide the case the parties shaped. (*Id.* at p. 1582.)

HSN's reliance on *Sineneng-Smith* is misplaced. The trial court here did not radically transform the case. As the *Sineneng-Smith* court stated, the party presentation principle is "supple" and permits a court a "modest initiating role." (*Sineneng-Smith, supra*, ___ U.S. ___ [140 S.Ct. at p. 1579].) Again, the court simply asked the parties to brief another theory regarding whether the judgment was void, the issue Purcell raised.

Second, we too conclude the judgment was void. "Section 580, subdivision (a) provides in part: 'The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint' '[T]he primary purpose of the section is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them.' [Citations.]" (*Stein v. York* (2010) 181 Cal.App.4th 320, 325; *Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.* (2018) 23 Cal.App.5th 1018, 1020 [same]; *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 286 (*Kim*) [same].)

Here, HSN concedes the cross-complaint did not include a specific sum of damages. But HSN asserts there was no "statutory authority" prohibiting its statement of damages as serving as an amendment to the cross-complaint. But there was well established *case* authority precluding its application.

"Statements of damages are used only in personal injury and wrongful death [Citation.] In all other cases, when recovering damages in a default judgment, the plaintiff is limited to the damages specified in the complaint. [Citations.]" [Citations.]" (*Kim, supra*, 201 Cal.App.4th at p. 286.)

Here, CGR's cross-complaint alleged causes of action for equitable indemnity, contribution, and declaratory relief, and not personal injury or wrongful death. The statement of damages did not serve as an amendment to the cross-complaint. (*Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 972-973.)

HSN relies on *Horton v. Horton* (1941) 18 Cal.2d 579, to support its claim its statement of damages was sufficient. In that case, wife filed a complaint for separate maintenance and requested ““a reasonable sum”” for attorney fees. (*Id.* at pp. 580-581.) After husband failed to respond, the trial court entered his default, followed by a default judgment awarding wife, among other things, \$400 in attorney fees. (*Ibid.*) In rejecting husband’s contention the trial court granted relief in excess of that demanded in the complaint, the California Supreme Court reasoned wife’s complaint was sufficient because it said husband could earn in excess of \$500 per month and itemized the community property in detail. (*Id.* at p. 583.) The court concluded the judgment was not void pursuant to section 580. (*Ibid.*)

HSN’s reliance on *Horton* is misplaced because in that case wife’s complaint put husband on notice of the parameters of the amount being sought. Here, the cross-complaint did not, and the statement of damages was insufficient.

Finally, HSN asserts our conclusion would exalt form over substance in contravention of well-established California law. (*Ameron Internat. Corp. v. Insurance Co. of State of Pennsylvania* (2010) 50 Cal.4th 1370, 1386 [in characterizing pleadings policy to emphasize substance over form].) But the policy does not excuse literal noncompliance in every situation, particularly when a statute’s requirements are mandatory. (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1333; § 580 [“relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint”].) Thus, examination of the court record without reference to extrinsic evidence establishes the judgment was void.

II. Motion to Set Aside

HSN contends the trial court abused its discretion in granting the motion because Purcell was not diligent in seeking relief. Not so.

“While trial courts are vested with discretion by section 473 to determine whether motions thereunder are brought with adequate diligence under the factual

circumstances of each particular case, a default that is void on the face of the record when entered is subject to challenge at any time *irrespective of lack of diligence* in seeking to set it aside within the six-month period of section 473. [Citations.]” (*Plotitsa v. Superior Court* (1983) 140 Cal.App.3d 755, 761, italics added.)

Here, the trial court did not abuse its discretion by granting Purcell’s motion. It is well established there is no time limit to seek relief from a void judgment. Because Purcell sought relief from a void judgment, he could do so at any time.

HSN relies on *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444, to claim Purcell should have sought relief within two years. *Dill* is inapposite because it concerned a judgment void because of improper service. (*Rogers v. Silverman* (1989) 216 Cal.App.3d 1114, 1124 [two-year limit for judgment facially valid but void for improper service]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2019) [¶] 5:491, p. 5-139.)

DISPOSITION

The order is affirmed. Respondent is awarded his costs on appeal.

O’LEARY, P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.